



July 23, 2004

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Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C., 20551

Re: Comments to proposed amendments to Regulation J
Docket No: R-1202

This letter is in response to the amendments to Regulation J published by the Board of Governors of the Federal Reserve System (“Board”) proposing to amend subpart A of Regulation J to provide for the rights and obligations of sending banks, paying banks, returning banks, and Reserve banks in connection with the collection of substitute checks and items that have been converted to electronic form. US Bank National Association (“U.S. Bank”) has reviewed the Proposed Rule and has further endorsed and adopted the Comments set forth by certain financial services industry organizations and technology companies (“Industry Commenters”). Because of the importance of recommendations and clarifications sought by the Industry Commenters, US Bank reiterates its support of those comments as summarized below:

Comments to Regulation J

1. General Comment - Relation of Regulation J to Regulation CC and Check 21 Act. US Bank agrees with the Industry Commenters recommendation that the final rule includes a provision in Section 210.3(General Provision) of the final regulation that states that nothing in Regulation J alters the liability or obligations of any party that is otherwise established under the Check 21 Act or subpart D of Regulation CC. This verbiage helps to eliminate potential confusion as to whether Regulation J establishes a different standard of liability than would otherwise arise under the Check21 Act.

2. General Comment - Use Of The Term “Handle.” US Bank agrees with the Industry Commenters that the Supplementary Information accompanying the final rule clarify that the term “handling” as used in Regulation J, when referring to the handling of a substitute check or representation of a substitute check, would constitute a transfer, presentment or return of a substitute check and receipt of consideration as those phrases are used under Section 229.52 of subpart D of Regulation CC and Section 5 of the Check 21 Act. The Reserve Bank is making the warranties under the Check 21 Act and subpart D of Regulation CC to persons that subsequently receive the substitute check.

3. Warranties Regarding MICR Line. Section 210.5(a)(4)(i) of the Proposal includes a new warranty from the sender to the Reserve Bank. The sender warrants that the electronic item, that is not a representation of a substitute check, “replicates the MICR line of the original check, except for any changes required or permitted by part 229, subpart D of this chapter for substitute checks....” US Bank supports the (3) comments on this new warranty as proposed by the Industry Commenters:

A. Replication of MICR Line: The Industry Commenters believe that it may not be accurate to state that “the item...replicates the MICR line of the original check.” US Bank agrees with the recommendation that this Section be revised to clarify that the item includes a record of the MICR line information.

B. MICR Line at Time of Truncation: US Bank agrees with the recommendation that the warranty under Section 210.5(a)(4)(i) state that the item must contain the MICR line of the original check at the time of truncation, and not the MICR line at the time the original check was issued.

In addition to the above recommended change to this Section of the Proposal, we recommend conforming changes be made to Sections 205.6(b)(3)(i)(A), 205.12(c)(4)(i) and 205.12(e)(1)(iii)(A)(1) which contain similar regulatory text.

C. Position 44 and Recognition of Industry Standards. US Bank agrees with the recommendation that the discussion of Section 210.5(a)(4)(i) in the Supplementary Information to the final rule clarify that the phrase “except for any changes required or permitted by part 229, subpart D of this chapter for substitute checks” does not require the sending bank to code position 44 of the MICR line of an electronic item in the

manner required for substitute checks or electronic representations of substitute checks. Images of original checks should not contain the Position 44 code that identifies a substitute check or an image of a substitute check.

4. Sender Indemnity. In Section 210.5(a)(5)(iv) of the Proposal, the sender indemnifies the Reserve Bank for any indemnity made by the Reserve Bank under Section 229.53 of Regulation CC if the sender sent a substitute check or a paper or electronic representation of a substitute check. US Bank agrees with the recommendation that this section include a clarifying statement that the indemnity only applies if the Reserve Bank delivered a substitute check to a receiving bank and as a result the Reserve Bank was required to make the indemnity under Section 229.53 of Regulation CC. This change would make it clear that the delivery of a substitute check, as a required pre-condition for the indemnity under Section 229.53 of Regulation CC, must be satisfied for the indemnity under Regulation J to apply.

5. Limitation on Reserve Bank Liability.

A. Recognition of Liability Arising Under Check 21 Act. US Bank agrees with the recommendation that Section 210.6(c) expressly recognize that a Reserve Bank may incur liability arising under the Check 21 Act. As a related matter, Section 210.12(e)(2) of the Proposal addressing liability in the return process recognizes a Reserve Bank's liability arising under subpart D of Regulation CC, but not liability arising under the Check 21 Act. The proposed text provided by the Industry Commenters letter sets forth recommend revisions to both of these Sections of the Proposal to address this issue.

B. Reserve Bank Participation in Expedited Recredit Procedure for Banks. US Bank agrees with the request that the discussion of Section 210.6(c) in the Supplementary Information accompanying the final rule clarify that nothing in that Section exempts a Reserve Bank from the expedited recredit procedure for banks.

6. Time for Commencing Actions Against Reserve Banks. US Bank agrees with the following two comments to Section 210.6(d) relating to the time period for commencing an action against a Reserve Bank.

A. With respect to Section 210.6(d)(2), we recommend that the text discussing this section in the Supplementary Information to the final rule clarify that the standard for accrual of a claim under that Section should be interpreted consistently with the standard for the accrual of claims under Section 229.56(c) of Regulation CC. Since the time limit in Section 229.56(c) of Regulation CC will apply to claims that are brought by a paying bank's customer with respect to such a substitute check, the paying bank should have the same time period for bringing a claim under the Section 210.6(b)(3) indemnity against a Reserve Bank that provided the related electronic image.

B. With respect to Section 210.6(d)(3) of the Proposal, the text of the Proposal states that the time period for commencing an action "does not lengthen" the time limits

for claims under 229.38(g) or under subpart D of Regulations CC. We recommend that the phrase “does not lengthen” be replaced with the phrase “does not alter.”

7. Application of Indemnities in Section 210.5(a)(5)(iv) and (v). Sections 210.5(a)(5)(iv) and (v) of the Proposal set forth two new indemnities from the sending bank to the Reserve Bank. Both of these indemnities allow the Reserve Bank to seek an indemnity from the sending bank when the Reserve Bank is itself liable for an indemnity under Regulation J and subpart D of Regulation CC. US Bank agrees with the recommendation that these sending bank indemnities be revised in the final rule to make it clear that the sending bank’s breach of its warranty relating to the electronic item must be the cause of the liability arising to the Reserve Bank in order for the Reserve Bank to recover against the sending bank under the indemnities.

8. Scope of Warranty and Liabilities Under Section 210.6(b)(3)(i) and (ii). Section 210.6(b)(3)(i) of the Proposal provides that the Reserve Bank makes certain warranties regarding the item to “the bank to which it transfers or presents the item.” Similarly, the indemnity from the Reserve Bank in Section 210.6(b)(3)(ii) is made only to “the bank to which it transfers or presents the item.” By comparison, under Section 210.6(b)(1) the Reserve Bank makes certain warranties to the “subsequent collecting bank and the paying bank and any other payor.” US Bank agrees with the Industry Commenters observation that the warranties in Section 210.6(b)(3)(i) and indemnity in Section 210.6(b)(3)(ii) should apply to the same parties as listed in Section 210.6(b)(1), and the text of these sections should be conformed accordingly.

Respectfully Submitted,

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